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MEMO ENDORSED

October 26, 2016

VIA ECF

Honorable Kenneth M. Karas, U.S.D.J.
United States District Court - SDNY
300 Quarropas Street
White Plains, New York 10601

Re: Sarah Cohen v. State Farm Fire and Casualty Company, et al.
Docket No. 15-cv-3759 (KMK)

Dear Judge Karas:

My firm represents plaintiff in the above captioned matter. This letter is written in response to State Farm's letter dated October 26, 2016. Counsel for State Farm, Sean McAloon, has written a letter seeking another pre-motion conference in an attempt to file a motion for summary judgment. However, procedurally State Farm can no longer request such a motion and thus even the request for the conference should be denied. Since it is clear that no conference should even be granted, this letter deals with the procedural issues with Mr. McAloon's request for a conference. Should the Court determine that a conference is appropriate, Plaintiff requests an opportunity to substantively respond to Mr. McAloon's letter.

On May 10, 2016, this Court signed a Case Management and Scheduling Order stating that all preconference letters were due by October 7, 2016. State Farm filed such a letter, I filed a response, and the conference was held on October 21, 2016. At that conference, the Court did not give approval for State Farm to file a motion for summary judgment.

At the conference, the Court seemed to question whether Mr. McAloon, counsel for State Farm was upset by the Court's direction. Though Mr. McAloon assured the Court that he was not upset, he has shockingly failed to take the direction of the Court and has now, filed a new letter seeking a second opportunity to file a motion for summary judgment, which by its own admission raises no new issues not addressed in the previous pre-conference letter. Mr. McAloon's failure to recognize the direction of the Court is simply shocking.

What is worse, Mr. McAloon has indicated to me that even if the Court does not give approval for him to file a motion for summary judgment, he plans on filing the motion anyway. To wit, Mr. McAloon wrote to me "I am not aware of any authority that gives the Court the power to prevent State Farm from filing a motion for summary judgment on any of the issues in the case..." See Exhibit A, attached hereto.¹ This appalling statement of disrespect for the directives of the Court is unacceptable. Needless to say, I believe this Honorable Court's rules, section II addressing motion practice makes it clear that Mr. McAloon's proposed motion for summary judgment cannot be filed without the Court granting him leave to make the motion. Mr. McAloon's cavalier attitude is not

¹ A portion of the email dealing with settlement is redacted.

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surprising given that he has offered no rationale as to why he may baldly and unilaterally violate the Court's Case Management and Scheduling Order.

Needless to say, since pursuant to the Case Management and Scheduling Order, Mr. McAloon's time for filing a pre-motion letter has come and gone, and his previous request to file a motion was denied, procedurally, Mr. McAloon's request for a conference should be denied. In addition, considering Mr. McAloon has no authority to file a second pre-motion letter, I respectfully request the Court order State Farm to pay Plaintiff's attorney's fees in opposing its second, unauthorized pre-motion letter.

If the Court plans on granting a conference pursuant to Mr. McAloon's request, Plaintiff requests an opportunity to substantively respond to Mr. McAloon's second, unauthorized pre-conference letter.

Respectfully Submitted,

Jason F. Lowe

cc: All counsel via ECF

State farm is to respond to this
letter by 11/1/16.

So ordered.

10/29/16

Exhibit A



Jason Lowe <jasonlowe@gmail.com>

Cohen v. State Farm

Sean McAlloon <Sean.McAlloon@rivkin.com>
To: Jason Lowe <jasonlowe@gmail.com>

Wed, Oct 26, 2016 at 2:44 PM

Jason:

I disagree with your procedural argument and will be filing a letter today requesting a teleconference. While Judge Karas certainly made his position regarding the merits of State Farm's motion for summary judgment on the coverage issues known, he did not address the issue of attorney's fees, which was raised in State Farm's letter motion. While I certainly should have thought to raise it at the conference, I do not believe State Farm is precluded from raising it now. Further, I am not aware of any authority that gives the Court the power to prevent State Farm from filing a motion for summary judgment on any of the issues in the case even if the Court has questioned whether the motion will ultimately be successful based upon his present understanding of the facts of the case. With respect to the attorney's fees, I believe the case law I provided is dispositive and your refusal to engage on the merits belies your recognition of same. In any event, we'll see what the Court has to say.



Sean McAlloon

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Please do not print this email unless it is necessary.

From: Jason Lowe [mailto:jasonflowe@gmail.com]
Sent: Wednesday, October 26, 2016 12:31 PM
To: Sean McAloon
Subject: Re: Cohen v. State Farm

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[Quoted text hidden]